

IN RE ARBITRATION BETWEEN:

TEAMSTERS LOCAL 320

and

BELTRAMI COUNTY

DECISION AND AWARD OF ARBITRATOR

BMS CASE # 14-PN-0892

JEFFREY W. JACOBS

ARBITRATOR

December 18, 2014

IN RE ARBITRATION BETWEEN:

Teamsters Local 320,

and

DECISION AND AWARD OF ARBITRATOR
BMS CASE # 14-PN-0892

Beltrami County, Minnesota

APPEARANCES:

FOR THE UNION:

Kari Sieme, Teamsters Local 320
Katie Nolting, Assistant County Attorney

FOR THE EMPLOYER:

Pam Galanter, Frank Madden and Associates
Tim Favor, Beltrami County Attorney

PRELIMINARY STATEMENT

The parties were unable to resolve certain issues concerning the terms of the collective bargaining agreement and requested mediation from the Bureau of Mediation Services. Negotiation sessions were held and the parties negotiated in good faith but were ultimately unable to resolve certain issues with respect to the labor agreement. The Bureau of Mediation Services certified 19 issues to binding interest arbitration pursuant to Minn. Stat. 179A.16, subd. 7 by letter dated August 20, 2014.

A hearing in the above matter was held on November 19, 2014 at the Beltrami County Administration Building in Bemidji, Minnesota. The parties presented oral and documentary evidence at that time. Post-hearing briefs were mailed and received by the arbitrator on December 2, 2014 at which time the hearing was considered closed.

ISSUES PRESENTED

The issues certified at impasse and in dispute at the time of the hearing are as follows:

#’s 1, 2 and 3. General wage increases for 2014, 2015 and 2016 respectively.

#4. Wages for 2014 – Bargaining Unit Wage increase

#’s 5, 6 and 7. Step increases for 2014, 2015 and 2016 respectively.

#8. Implementation of Job Evaluation Plan in 2014

#’s 9, 10 and 11. Flex Account Contributions for 2014, 2015 and 2016 respectively.

#’s 13, 14 and 15. Court preparation time for 2014, 2015 and 2016 respectively.

#’s 16, 17 and 18. Clothing Allowance for 2014, 2015 and 2016 respectively.

#19. Longevity Pay

The parties presented the matter in a slightly different order from what appears in the BMS certification letter. As discussed more below, there was some dispute about whether there truly was agreement on some of the issues. It was apparent that the union believed that there was agreement on the general wage increase for 2014, 2015 and 2016 (Issues #1-3), step increases for 2014, 2015 and 2016 (Issues # 5-7), Job Evaluation Plan (Issue #8) and Flex Account Contribution 2014, 2015 and 2016 (Issues # 9-11). They will be discussed in the order in which the parties presented them.

The employer disputed this and noted that the union’s position was premised on placing the affected employees on a higher step than the recent job evaluation recommended that they be placed.

The parties resolved Issue # 12 – floating holidays. That issue will not be discussed.

**WAGES – 2014, 2015 and 2016 – ISSUES 1, 2, 3 & 4
STEP INCREASES FOR 2014, 2015 AND 2016 – ISSUES 5, 6 & 7
IMPLEMENTATION OF JOB EVALUATION STUDY - ISSUE #8**

As noted above, the parties presented these issues in a slightly different order from each other. It became clear though that the union's position, while consistent with the employer’s positions on some items, was premised on the argument that the employees in the unit were underpaid and thus should be entitled to placement on Step 18 of the wage structure. Based on the evidence and the issues to be determined, and how interrelated they are, these issues will be discussed and decided together.

The County’s position was that the union’s request for placement on that Step was unjustified and inconsistent with the Springsted Job Evaluation Study, which recommended placement at Step 17 of the wage structure. Thus, while the general wage increases and step increases were consistent, the basic premise of where the employees should be placed was quite different.

UNION'S POSITION

The union's position was premised on these employees being placed on pay grade 18, rather than on grade 17 as recommended by the recently conducted Springsted Job Evaluation Study. The union also contended that there was agreement between the parties on the general wage increases for 2014, 2015 and 2016 of 1% in 2014, 2% for 2015 and 1.5% on January 1, 2016 and an additional 1.5% general increase effective July 1, 2016. The Union attached an Appendix outlining the proposed salary increases, showing hourly rates and Steps for 2014, 2015 and 2016 and listed those as Appendices A, B and C to their final positions to the BMS as follows:

APPENDIX A – 2014 1% COLA INCREASE ON JANUARY 1, 2014 (reflects hourly rates)

1	2	3	4	5	6	7
36.25	37.37	38.62	39.71	40.91	42.14	43.40

APPENDIX B – 2015 2% COLA INCREASE ON JANUARY 1, 2015 (reflects hourly rates)

1	2	3	4	5	6	7
36.97	38.12	39.29	40.51	41.72	42.98	44.27

APPENDIX C – 2016 1.5% COLA INCREASE ON JANUARY 1, 2016 (reflects hourly rates)

1	2	3	4	5	6	7
37.53	38.69	39.88	41.12	42.35	43.62	44.93

APPENDIX C – 2015 1.5% COLA INCREASE ON JULY 1, 2016 (reflects hourly rates)

1	2	3	4	5	6	7
38.09	39.27	40.48	41.73	42.98	44.28	45.61

In support of this the union made the following contentions:

1. The union initially argued that the County never conditioned its position on implementation of the Springsted study per its terms in its final position to the BMS. The union asserted that the jurisdiction of the arbitrator is governed by M.S. 179A.16 subd 5. Thus, the union asserted, the County's position should not even be considered since it was not the basis for its final position on any of the wage issues. The County's position is therefore outside of the statutory mandate to state the final position to BMS and not deviate from that position.

2. The union acknowledged that it is not seeking to challenge the results of the Springsted study and is not attempting to undermine it. The argument that the union is simply seeking to overturn the Springsted study is thus misplaced. The union instead argued that the standard in interest arbitration includes considerations of internal and external comparisons, ability to pay and other economic considerations, such as CPI and inflation. The union argued that using these criteria, there is justification to increase the pay scale to correct for the unusually low top pay for these employees.

3. The union further asserted that while entry level pay for these employees is somewhat competitive, the top pay is grossly under market for the area and the comparable counties. The union introduced evidence from 9 other counties and asserted that the top pay for their Assistant County Attorneys is well above that of Beltrami County. Of these 9 other counties, Beltrami has the lowest top pay for its Assistant County Attorneys.

4. The union noted that the top pay currently is approximately \$84,323 per year whereas the next lowest is almost \$86,000 (Clay County) and the highest is Aitkin at \$102,668.80 per year. See union tab #4 showing comparable salaries for Aitkin, Becker, Carlton, Cass, Clay, Crow Wing, Douglas, Itasca and Otter Tail counties.

5. Moreover, the Beltrami County attorney's office does considerable city prosecution work for the City of Bemidji as well as Blackduck, Minnesota, whereas none of the other 9 counties show significant city related prosecution. This of course adds extra work for these employees that their counterparts in other comparable counties do not have to bear.

6. The union also noted that these employees work very hard and are frequently required to work weekends and even holidays in order to complete their work and to prosecute cases in an effective and timely manner. They are frequently subject to very strict time limits and occasionally a less than forgiving Court calendar that other employees within the County are not.¹

¹ There was evidence that one Judge in the 15th District refused to allow rescheduling of a trial so the affected County Attorney could attend his own mother's funeral. Apparently the same judge did something similar earlier and would not reschedule a trial for an attorney's father's funeral.

7. The union submitted evidence that shows that all of the Assistant County Attorneys work well in excess of 40 hours per week – sometimes as much as 50 or 60 per week depending on the trial schedule and other issues that might arise. This argument was also used below in support of Court time but it was a theme that ran throughout the case.

8. Despite the findings of the Springsted study, the union asserted that these employees should be at step 18, not 17 on the pay scale to rectify this wage discrepancy. The union noted that the market is clearly far ahead of the Beltrami County Attorney's office and that an increase to reflect its position should be awarded to bring these employees' wages into line with that market.

9. The union noted that it was in agreement with the County in terms of the general wage increases and the step increases pursuant to Article 12.2 but that the starting point should be at Step 18 for the reasons set forth above.

10. Article 12.2 provides as follows:

“General adjustments for each calendar year shall be effective January 1 if January 1 falls on the first day of a pay period, otherwise general adjustments shall be effective the first day of the pay period preceding January 1. All other salary increases and step adjustments are effective of the first payroll period following the date in which the employee is eligible. If the employee's eligibility date is the first day of a payroll period that will be the effective date.”

11. Neither party suggested a change to the language of Article 12.2 but, as discussed herein, the parties took very different positions with respect to an increase of these employees to Step 18 on the pay scale.

12. The union also noted that these increases are well within the County's ability to pay and reflect modest actual dollar figures. The union cited one Commissioner with regard to a \$5,000.00 expense as small in comparison to the overall budget of Beltrami County.

13. The union thus argued that there is a compelling reason to award the placement on Step 18 and to proceed with general increases and step increases based on that step.

The union seeks an award on the general increases and step increases and the placement on the salary schedule in accordance with the wage matrix set forth above.

COUNTY'S POSITION

The County's position with respect to the general increases of 2014, 2015 and 2016 is the same as the union's: 1% in 2014, 2% for 2015 and 1.5% on January 1, 2016 and an additional 1.5% general increase effective July 1, 2016. While this may appear to be the "same" as that of the union, the County noted that the numbers are deceptive since the union seeks an increase in step placement, discussed below.

Likewise, the County also took the same position with regard to the step increases for 2014, 2015 and 2016, i.e. that the step increases shall be in accordance with Article 12.2. The County's proposal was to Implement the 7 Step Pay Schedule pursuant to the Springsted Job Evaluation Study and place current employees on the closest step without going below their current rate of pay. That would mean placing these employees on Step 17, not 18 as the union suggests. In support of this position the County made the following contentions:

1. The County argued that the union is seeking something now it could never have achieved through bargaining. The County asserted that the main criterion governing interest arbitrations is to award that which the parties would have been able to achieve through negotiations themselves. Further, the union is seeking a much greater wage increase than any other bargaining unit within the County.

2. The County noted that all of the other organized units, including some represented by Local 320, agreed to the implementation of the Springsted Study per its terms including the implementation for placement on the appropriate step pursuant to Article 12.2 set forth above. This is the only bargaining unit that sought to challenge the results of the Springsted Job Evaluation Study. The County argued that allowing the result the union seeks would undermine voluntary negotiation process favored by PELRA and would encourage other units to seek arbitration rather than settlement. The County also pointed out that this unit is very small, 5 employees, yet it seeks something no other unit was able to achieve despite their much greater size.

3. The County also noted that it has discussed its position with regard to the contingent nature of these negotiations and asserted that the union knew that while there was agreement on the general increases and steps, the County has always taken the position that all of this was contingent upon implementation of the Springsted Study.

4. The County asserted that the union has no right to challenge the County's decision to do the study. The decision to perform a job evaluation study is a managerial right. The union cannot use interest arbitration to undermine the right to do the study or of its conclusions. See, *Wright County and IBT 320*, BMS Case No. 97-PN-240 (Miller 1997).

5. The study was comprehensive and thorough, included information from employees and recommended placement of these employees at Step 17. The union and affected employees appealed that decision and after a review of the facts, Springsted maintained that the placement at Step 17 was appropriate. The union may not challenge the results of the study per se but, according to the County, is simply attempting to override it using the interest arbitration process.

6. The County also argued that there is no basis to overturn the results of the study or any compelling facts to support a deviation from its conclusions. The study showed that the Assistant County Attorneys were awarded a job value of 582.6 points, solidly within pay grade 17, and there was no evidence to warrant a different conclusion.

7. Further, granting the union's position would result in unacceptable compression between the salary of the Chief Assistant County Attorney and the salaries of Assistant County Attorneys. The Chief Assistant County Attorney was evaluated at 655 points, and Springsted assigned that position to pay grade 19, which has a point spread of 640-678 points. The County noted that wage compression is a consideration in interest arbitration and the County argued that this must be considered in support of its position that these employees be placed at Step 17. Moreover, there has traditionally been two pay grades separation between these categories of employees. The union's position would radically alter that and change years of stable wage progression.

8. The County argued that its position with regard to ability to pay is not that it would be unable to pay the increases but that there is no justification for such a large increase. However The County is limited in its ability to increase its property tax revenues because approximately 70% of the property within Beltrami County is exempt from taxes. There are a great number of tax exempt properties in Bemidji, including Bemidji State University, federal buildings, various tax exempt non-profits, churches and parks. There is also a large quantity of tax forfeit land in the County. As a result, the County's tax capacity is low and its tax rate is high.

9. Further, Beltrami County has an unusual expense, not found in other Counties' budgets, for foster care for native children, resulting in millions of dollars in expenses. The County noted too that of the 14 counties used by Springsted in making its determinations, Beltrami ranked 12th lowest in terms of tax capacity yet its tax rates are ranked at #1. This, coupled with the below average median income, number of its population at or below the poverty level and the low property values, shows that the increases sought by the union are neither justifiable economically or politically.

10. With regard to the general wage increases, the county noted that its position is entirely consistent with all other voluntarily negotiated wage settlement with other other units in Beltrami County. The County noted too that there is a long history of internal consistency in all wages that should not be disturbed by the union's position here.

11. In addition, the increases offered by the County, when coupled with step increases already in place, result in significant wage increases for these employees of between 12.75% and 25%. If the union's position is awarded the wage increases, coupe with step increases would range between 19% and over 32%. There is simply no set of economics that justifies those sorts of increases.

12. The County also focused on attraction and retention of employees and asserted it has had no trouble with either. A few attorneys have left but one went to the private practice and another left to re-locate due to that person's spouse getting a job in the Twin Cities area. There is thus no difficulty with employees leaving² and when there are vacancies, there are multiple applicants.

13. The County also pointed to the external comparables and argued that when longevity is factored in, these wage rates compare favorably with comparable counties. The County pointed to evidence that showed that the Beltrami wages are almost exactly average for all three years of this CBA when compared to the external market and thus counter the claim that they are significantly underpaid as the union suggested.

14. The County also countered the claim that these attorneys do extra work and noted that by State law, county attorneys are responsible for prosecuting all felony charges within their county. Thus these attorneys are no different from any other county in Minnesota.

15. Likewise, the County noted that the strict timelines and other work described by the union apply to all county attorneys throughout the State of Minnesota. There is thus no "extra" work here. The County acknowledged that the work can be difficult and that time lines must be strictly observed but noted that this is a reality faced by all attorneys – public and private practice, especially those in trial work where judges can be difficult even Draconian, time lines must be observed and the hours are long. This alone does not require additional pay when compared to similar positions.

The County seeks an award supporting its position with regard to placement on Step 17 of the pay schedule. As noted above, the general increases and step increases were the same except for the dispute about the placement on either pay grade 17 or 18.

² The County made a point that the current elected County Attorney is one of if not the longest serving County Attorney in the State of Minnesota.

MEMORANDUM AND DISCUSSION OF ISSUES 1 THROUGH 8

As noted, these issues will be discussed together due to the nature of the parties' positions in this matter. Several things were clear from the evidence and the record as a whole.

First, there was evidence that the union knew that the County's position was a package deal and was conditioned on the placement of these employees on Step 17. There was certainly no evidence that the County hid this or attempted in any way to mislead the union into believing there was an agreement when there was in fact not. Thus, the union's claim that there was "agreement" was somewhat misleading. The record as a whole revealed that the agreement was for the general increases and steps to be the same but premised, from the County's perspective, on placement at Step 17 per the Springsted report, whereas the union sought placement at Step 18.

Second, the statute requires that a party to interest arbitration submit to the BMS its final position and have that so certified by the Bureau. The statute however does not limit the arguments that might be made in support of that position. The evidence showed that the County's position was made clear to both the union and BMS. Further, even if a party's arguments in support of it changed – although as noted above, there was insufficient evidence to support that conclusion on this record – that alone would not undermine the jurisdiction to render an award on behalf of that party.

Further, the statute governing interest arbitrations does not require that a party specify each and every fact and/or argument it intends to make in support of its position. Minn. Stat. 179A.16 subd 5 provides in relevant part as follows:

Subd. 5. Jurisdiction of arbitrator or panel. The arbitrator or panel selected by the parties has jurisdiction over the items of dispute certified to and submitted by the commissioner. However, the arbitrator or panel has no jurisdiction or authority to entertain any matter or issue that is not a term and condition of employment, unless the matter or issue was included in the employer's final position.

The evidence showed that the employer's position was clearly stated and certified by the BMS. Thus, there is jurisdiction to determine these issues and to consider all arguments made by the parties in support of their respective positions in this matter.

The union asserted that while the starting salaries of these employees are competitive, the top salaries are not and that there should be an adjustment in the salary steps to account for the alleged disparity between Beltrami County and comparable counties. See union tab #4 referenced above.

In addition, the union argued that the County did not assert an inability to pay argument and thus should be required to pay a more competitive top salary to bring Beltrami Assistant County Attorneys' pay into line with comparable and surrounding counties. Part of the basis for the union's claim is that these employees are highly educated very motivated public servants who work tirelessly to protect the public and are required to spend long hours preparing for hearings and trials, have strict deadlines and are subject to considerable scrutiny from the public and the Courts alike.

These arguments are all true but apply equally to any county attorney office in the entire State. These arguments do not provide an adequate basis to set these County Attorneys apart from other similar positions in the comparable counties. There was also evidence that while it may not be listed formally, other county attorney offices prosecute felonies throughout their respective counties whether those are committed within a city or not. On this record there was insufficient evidence to establish a high enough degree of extra work to support the claim that the employees should be placed at a higher salary step than recommended by the Springsted study.

The County argued that there is no statutory authority to overturn the results of the Springsted study – and likewise asserted that the net effect of the union's argument would be to do just that. The County provided evidence that the study was done in good faith and was within the County's managerial discretion to authorize the study itself.

The County also provided evidence that the retention and attraction of attorneys has not been a problem over the past few years and that those that have left have done so either to take jobs in the private sector or to move for personal reasons. On this record, there was insufficient evidence to warrant an increase in pay based on difficulty in attraction or retention of competent employees.

Externally, the evidence showed that the increases granted if the County's position is awarded would keep Beltrami competitive, although it would not advance their position with respect to the comparable counties. One of the major factors in considering appropriate wage awards in interest arbitration is the external market. The evidence as a whole showed that there was insufficient evidence to warrant a deviation from the Springsted Study in order to bring these employees into line with the external market.

Further, the evidence supported the County's claim that the longstanding salary separation between supervisory personnel and the Assistant County Attorneys has even 2 pay grades. The union's position in this matter would alter that longstanding separation without adequate evidence or compelling need to do so.

Moreover, the County did not make an inability to pay argument but showed that the tax burden on its citizens would make the increases requested by the union difficult to justify. While this unit is relatively small and the "absolute" numbers not overly burdensome, the arbitrator is not unmindful of the impact of one group getting something that others did not and what impact that might have on current labor relations and future negotiations. Without more evidence of compelling need to bring these employees' top salaries up, there was insufficient evidence to award the unions position with respect to placement at Step 18.

Finally, there was considerable evidence that the other employee groups have agreed to implement the results of the Springsted Study, including much larger employee groups as well as those represented by the same union. Certainly these employees occupy a very different position within the county in terms of what they do and how they do it but the general internal pattern was shown to be in support of the County's position.

As both parties noted, the role of interest arbitration is to determine what the parties would have negotiated for themselves in the absence of interest arbitration. One of the strongest and most compelling measures is to look at what the other groups negotiated voluntarily. While that is not the only factor to be considered, it was a very strong piece of evidence on this record.

Thus, based on the external evidence and comparisons to other comparable counties showing that the County's position would keep Beltrami at pace with these, the lack of evidence of a problem with attraction and retention of capable employees, and the strong internal pattern of settlements and the acceptance of the results of the Springsted Study as asserted by the County, the appropriate award here is to award the County's position of placement of these employees at Step 17 as recommended by the Springsted Study. As the parties have noted, this appears to be the main issue in dispute. Once that issue is resolved, the general and step increases were not in dispute and will be awarded as set forth in the final positions to the BMS.

AWARD ON SALARY AND GENERAL ADJUSTMENT OF SALARY

A 1.0% general wage increase is awarded for 2014 effective January 1, 2014; a 2.0% general wage increase is awarded for 2015 effective January 1, 2015 and a 1.5% increase is awarded effective January 1, 2016 and an additional 1.5% general wage increase is awarded effective July 1, 2016.

Step increases: The language of Article 12.2 is retained for each year of the CBA, 2014, 2015 and 2016. The County's position with respect to Implementation of the Springsted 7 Step Pay Schedule is awarded. The affected employees to be placed at Step 17 per the Springsted Study.

FLEX ACCOUNT CONTRIBUTIONS – 2014, 2015 and 2016 (Issues 9-11)

UNION'S POSITION

The Union's position is that there was no difference in the final positions with regard to the flex account contributions. The union sought an increase of \$50.00 per year in each of the contract years to the employee flex accounts provided for in article 17 of the CBA. This would result in a \$890.00 per month contribution in 2014, a \$940.00 per month contribution in 2015 and a \$990.00 per month contribution in 2016.

COUNTY'S POSITION

The County's position with respect to these contributions was the same as far as the language of Article 17 went but again conditioned the contribution to the flex accounts on the question of placement of these employees at Salary Grade Step 17. See discussion above regarding issues 1-8.

DISCUSSION OF FLEX ACCOUNT CONTRIBUTIONS FOR 2014, 2015, 2016.

This issue does not merit much additional discussion since the parties' positions on the flex account is essentially the same. It was clear that the County conditioned its agreement on the \$50.00 per month per year increase set forth above on the award on the wage issues and the placement not the salary step. Having determined that the County's position regarding placement on the salary step was awarded in the discussion of Issues #'s 1-8 above, this award follows the parties' final positions.

AWARD ON FLEX ACCOUNT CONTRIBUTIONS FOR 2014, 2015, 2016.

The language of article 17.1 is to provide for a contribution to the employee's flex account of \$890.00 per month in 2014; \$940.00 per month in the 2015 and \$990.00 per month in 2016.

COURT PREPARATION ALLOWANCE (NEW) (Issues 13-15)

UNION'S POSITION

The union seeks new language allowing for court preparation allowance. The union proposes a new Article 21.3 that would compensate the employees \$5,000.00 per year paid in the first full pay period in December of each year. In support of this position the union made the following arguments:

1. The union argued that these employees generally work well over 40 hours per week – sometimes up to 55 hours per week or more if their trial schedule is particularly heavy. Since they are considered exempt employs under the FLSA, they are not entitled to overtime.

2. The union further argued that no other employee group is subject to the strict deadlines and time requirements that they are and that the courts in the Beltrami area can be particularly Draconian – even denying a continuance to attend a person’s own mother’s funeral.

3. The union also cited a comment by a commissioner who indicated that a \$5,000.00 expenditure in a budget as large as Beltrami County’s was very small. The union thus asserted that the expense, while new, is very small in comparison to the other expenses in the county.

4. The union noted that their schedules are at the mercy of the Court. Given the strict time deadlines under the criminal statutes and those imposed by the Courts, these attorneys are under constant pressure to file documents, prepare for trial and make appropriate appearances.

5. Due to the small size of the department there are no “extra” attorneys available to do work when the attorneys are preparing for trial or other matters. The union argued that an extra payment to compensate these attorneys for the time they spend prepping for Court appearances is appropriate and necessary.

6. The union again raised the argument as noted above, that the top pay is below that of comparable counties and should be adjusted to bring their pay into line with the amount of time they spend doing their jobs.

7. The union argued that such preparation time is found in the Stearns County Essential Supervisor LELS contract. Those employees are granted an additional amount of pay when they have to prepare for Court. The union acknowledged that while this is a “new” area, but asserted that if “new” matters were not placed in labor agreements to reflect the reality of the working conditions to those covered by it, we would still be in the dark ages in terms of terms and conditions of employment. The union asked that the arbitrator plow this new ground to provide adequate compensation for these employees to reflect that very reality.

The union seeks an award for the new language set forth in its final position to the BMS with respect to Court preparation.

COUNTY’S POSITION

The County is opposed to the addition of the new language and additional costs for Court preparation time. In support of this the County made the following contentions:

1. The County noted that these employees often work other than 40 hours per week – just like every County Attorney in the State of Minnesota and just as many public employees who are salaried and thus exempt from the overtime provisions of the FLSA. There is no distinction inherent in these positions warranting additional pay.

2. The County also argued that when such a new economic benefit is requested the party requesting it must either show a compelling need for it or a quid pro quo in exchange for it.

3. The union offered nothing in exchange for this new and somewhat expensive economic benefit. The union made no proposal to cut a benefit or even defer one. The County asserted that this request is a poorly veiled attempt to overturn the previous denial of compensatory time from a prior interest award in which that benefit was denied. The County argued that this benefit must be one that is negotiated at the bargaining table and not one created out of thin air through interest arbitration.

4. The County argued the union's claim that the waiver of compensatory time is a quid pro quo for this benefit is tautological. The County asserted that the union never had compensatory time and thus the "waiver" of a request for it is meaningless and offered no quid pro quo at all.

5. Further, the County argued that there is no compelling reason to simply add this additional pay and thus this additional cost. The County noted several times that these attorneys are not asked to do anything different than any other public attorney, either at a county, city or State level in terms of a their trial schedule. Attorneys are always subject to time limits set by the Courts or by statute and must always comply with those time deadlines and perform extra hours of work to assure they adequately and competently prepare their cases for trial. This is true of prosecutors and public defenders alike in criminal cases yet no other County Attorney's office offers such a benefit. See County exhibit 62.

6. The County argued that there is no external market evidence of this nor any internal comparable. The County countered the claim that the LELS unit in Stearns County provided an analogous benefit and noted that the employees in that unit do not perform trial work as part of their normal duties. Attorneys obviously do and know that from their very first day at work.

The County seeks an award denying the union's claim for this additional benefit.

MEMORANDUM AND DISCUSSION OF COURT PREPARATION TIME

As almost every attorney who does trial work know, their schedule is often dictated by the Courts. Further, as every trial attorney knows, they are subject to strict time deadlines imposed by rule or by statute and must comply with those or face an adverse decision by the Court, dismissal of their claim or worse – a malpractice claim by anyone affected by the missed deadline. While it was clear that the Assistant County Attorneys are very hard working very diligent and motivated people, their work is not substantively different from other similarly situated employees in comparable counties. It is clear that all county attorney offices are subject to these rules.

None of the other comparable counties offer a benefit of this nature. Thus there was no significant evidence of an external market reason to award this benefit.

Further, while the evidence of judges in and around the Bemidji area denying requests for continuances even where attorney's mother and fathers have passed away and need to attend their funerals was *very* troubling. One wonders what sort of person would even consider making such a ruling and one wonders even more how such a person got their job and how they keep it. Still, that alone did not adequately explain why there would be a request for additional compensation for Court preparation time. Moreover, while there was little evidence as to what jurisdiction these particular judges have they are presumably sitting in the 15th Judicial District and are likely dealing with County attorneys from comparable counties as well yet those counties offer no such benefit even though they too are potentially subject to these sort of unreasonable rulings.

Further, as the County asserted there was no adequate quid pro quo offered in exchange for this economic benefit. Generally it is the case that unless there is a compelling reason to award an additional economic benefit, especially in a situation such as this where there is a history of negotiations between the parties, there is usually some sort of exchange or quid pro quo required for it.

This is not a hard and fast rule but there was no evidence that the union offered anything of value to the County in exchange for this benefit. Further, even though one county Commissioner (who does not by law represent the entire County Board) made a comment regarding how \$5,000.00 fit into the overall Beltrami County budget, that comment alone did not justify this expense.

Public bodies have considerable discretion as to how to spend public money. What may seem small to get one public benefit or amenity may well be too large for another. The County and the County Attorney himself, Mr. Faver, recognized the extraordinary and diligent work the Assistant County Attorneys perform.

This was a clear credit to the excellent work they do. Much the same could be said for other Beltrami County employees and the question is whether there was sufficient evidence to award in interest arbitration a new benefit. On this record there was not and the County's position is awarded.

AWARD ON COURT PREPARATION TIME – ISSUES 13, 14 & 15

The County's position is awarded. No new language regarding Court preparation time.

ANNUAL CLOTHING ALLOWANCE – ISSUES 16, 17 AND 18 – CLOTHING ALLOWANCE FOR 2014, 2015 AND 2016

UNION'S POSITION

The union proposed new language to be added as Article 21.4 as follows: Each employee shall be given \$1,000.00 as a clothing allowance payable in the first full pay period in January of each year. In support of this position the union made the following contentions:

1. Court rules require that attorneys wear "appropriate attire to court. See August 15, 2008 memo from Judge Benshoof and Minnesota Court Rules of General Practice Rule 2. Attorneys are required to wear appropriate attire in any appearance and must purchase suits and appropriate clothing, which of course wear out over time. Ms. Nolting testified that since they are in court almost every day they clearly need to have more than one suit to wear. Suits cost \$350.00 to \$500.00. In addition they must be cleaned and pressed, which also is a large expense over the course of a year.

2. The union also noted that most of the law enforcement personnel are paid a clothing allowance as part of their compensation for the year, including plain clothes investigators who rarely if ever appear in uniform except for special ceremonial occasions. They receive \$665.00 per year and the union maintained that it does not cost \$665.00 to maintain one uniform that is rarely worn.

3. The union pointed to other County employees who are also paid clothing allowances, see Tab 16-18. The Courthouse AFSCME and law enforcement units get varying clothing allowances. Further, not all of the employees who are granted clothing allowances perform law enforcement work.

4. The union noted that the clothing attorneys are required to wear to court are no less required than that of the law enforcement officer or bailiff and that these employees should be compensated for that. The union further asserted that even though this is a new benefit, there is a compelling need for this additional compensation.

5. The union noted too that there is some external evidence in favor of this benefit and that Clay County and Cass County pay a clothing allowance to their Assistant County Attorneys of \$400.00 and \$600.00 per year respectively. The union asserted that given the low top salary for these employees a clothing allowance would help bring them into line with the comparable counties.

The union seeks an award for a clothing allowance and the new language at Article 21.4 as set forth in its final positions to BMS.

COUNTY'S POSITION

The County opposes any change to grant a clothing allowance for these employees. In support of this position the County made the following contentions:

1. The employees who are granted a clothing allowance pursuant to the labor agreements in Beltrami County are law enforcement personnel who must wear uniforms as part of their jobs or other types of employees who wear uniforms of various types, such as custodians, outdoor field workers like appraisers, foresters and mechanics, whose clothing can be torn or soiled easily given the nature of their work. See County exhibits 63 and 64. The County argued that the union offered no quid pro quo for this and failed to establish a compelling reason for this new economic benefit.

2. The County also cited the specific language in the LELS contract requiring officers to at all times maintain a serviceable uniforms with appropriate badges and other required law enforcement equipment. The uniform allowance is thus for more than just shirts and pants and ties but is also for belts and other required equipment that even plain clothes investigators might be required to wear, especially in an emergency when additional law enforcement personnel are required to respond.

3. The County also noted that investigators are paid considerably less than the Assistant County Attorneys – some 33% less and are placed at pay grade 12. The County asserted that this is again an attempt by the unit to garner additional compensation without adequate support for it.

4. The County also argued that attorneys at virtually every level are expected to wear appropriate attire to court if they are litigators or at other meetings even if they are transactional lawyers. Every attorney knows that appropriate clothing is a necessary expectation of the licensure and an appearance in a Court either at the State or Federal level. There was further no evidence that any other Minnesota County offers a clothing allowance.

5. The County acknowledged that Cass and Clay Counties offer a clothing allowance but asserted that other counties in the comparison group do not. Thus, there is insufficient support externally for this benefit given that only 2 of the comparison counties offer a similar benefit – and then only \$400.00 to \$600.00. The union seeks \$1,000.00 without adequate support for why they are asking for such a large amount.

The County argued for no change in existing language.

MEMORANDUM AND DISCUSSION OF CLOTHING ALLOWANCE ISSUES #16-18

This is a new benefit sought by the union and was a somewhat closer case than did the request for court preparation time discussed above. Certainly some County employees are paid a clothing allowance, i.e. those in Cass and Clay Counties. The evidence showed that these employees are not required to wear a true uniform, such as law enforcement or other uniform with appropriate identifying insignia or other equipment. Further, the clothing allowance for appraisers, foresters and the employees listed on County exhibit 63 and 64 is to compensate them for the extraordinary wear and tear that such uniforms endure. These individuals work outdoors or in areas where the clothing can easily become torn or soiled – such as a mechanic or maintenance person. There was thus a distinction between the clothing worn by attorneys and that worn by other types of employees.

Externally there is some precedent to argue at least that a clothing allowance is appropriate. However only 2 of the comparison counties have this benefit. It was not clear how these allowances came into being, i.e. whether they were voluntarily negotiated, awarded by interest arbitration or whether they have been historically granted and simply stayed in the collective bargaining relationship. Further even if they were voluntarily negotiated it was not clear if there was any sort of exchange or other negotiated quid pro quo for the allowance. Also, as noted by the County, there was no evidence that any other Minnesota county grants such a benefit to its attorneys.

It was clear that attorneys must wear appropriate courtroom attire and that the cost of that clothing as well as its maintenance presents an expense to those required to wear suits and other appropriate clothing. This is another of the same sorts of well-known items that every attorney knows, or should know, when they enter the practice whether they are litigators or transactional counsel for public or private employers. At the end of the day there may well be a good argument for a clothing allowance given the compensation these employees are paid. At some point the parties may well voluntarily negotiate such a benefit to be consistent with other counties. That is left for future facts and future negotiations however.

In interest arbitration the question is whether there is a quid pro quo for a benefit – and there was no evidence of that – or a showing of a compelling need for it. Certainly there is a need for appropriate attire but not such a compelling need that it should be awarded in this context. The parties should negotiate this benefit if and when the time comes. The County's position must be awarded on these facts.

AWARD ON CLOTHING ALLOWANCE

The County's position is awarded. No new language for clothing allowance is awarded.

LONGEVITY - ISSUE #19

UNION'S POSITION

The union seeks an increase in longevity pay and an amendment to Article 23.1 as follows:

Article 23.1 All regular full-time and part-time employees covered by this Agreement shall receive longevity pay at the following biweekly rate:

	After 10 years	After 15 years	After 20 years
Assistant County Attorney	\$50 bi-weekly	\$100.00 biweekly	\$150 bi weekly

In support of this position the union made the flowing contentions:

1. The union's argument is simply that these amounts set forth above are not that much greater than the amounts granted currently. Further, that these employees are underpaid anyway and the increases would again bring them into line with other counties' pay structure.

2. Finally, the longevity pay would go into effect after 10 years of service and represent a small amount of money, especially when compared to the overall County budget. Thus, the County can pay these requested increases and should pay them due to the highly skilled nature of the attorneys' work and the difficult and valuable work they perform for the County and its residents.

The union seeks an award for an increase in longevity as set forth above.

COUNTY'S POSITION

The County is opposed to any increase in longevity pay. In support of this position the County made the following contentions:

1. The County also countered the claim that these employees are severely underpaid and noted that their salaries are in fact competitive when all factors are compared and taken into account. See County exhibits 51 and 52.

2. The County noted that in the original interest award between these two parties, the arbitrator awarded longevity to be consistent with the investigators. The parties have honored that language ever since. The longevity pay of the investigators has not increased and there is no compelling reason to increase the longevity pay for these employees.

3. The County pointed to the language of the 2007 interest award between these parties that read as follows with regard to longevity:

On balance the most appropriate longevity award should reflect consistency with the Investigators in the Sherriff's Department. Thus the award on longevity for the employees in this bargaining unit shall be the same as for the Investigators ... This is as follows: All regular full time employees covered by this agreement shall receive longevity pay at the following bi-weekly rate: Investigators receive \$10.70 biweekly after 5 years; \$42.80 after 10 years and \$64.19 after 15 years. See, County exhibit 68. *Teamsters Local 320 and Beltrami County*, BMS Case No. 07-PN-0414 (Jacobs 2007)

4. Only the AFSCME units' longevity pay has increased since 2006. The investigators' longevity has not increased and the County argued that there is thus no compelling reason to award an economic benefit under these circumstances. Other than that the union simply wants more money, there was no evidence presented to compel a greater longevity pay.

5. The County also noted that there was no quid pro quo offered in exchange for this increase and further argued that granting this increase would adversely impact employee relations within the County and upset the labor relations atmosphere. Internally, these employees have received the same longevity pay as the investigators.

The County seeks an award for no increase in longevity pay.

MEMORANDUM AND DISCUSSION OF LONGEVITY – ISSUE # 19

The same rationale for the original award of longevity pay applies here. The 2007 award was reviewed as part of this decision and showed that the appropriate comparison for these employees is the longevity pay granted to the investigators. While that may not be the case forever, it was a compelling rationale on this record with respect to this contract.

Given that the investigators' longevity pay did not increase, there must be a showing of a compelling reason to increase longevity pay in order to justify an increase in that benefit. On this record there was no such compelling showing. Accordingly, the County's position is awarded.

AWARD ON LONGEVITY – ISSUE # 19

The County's position is awarded and the current language is maintained.

SUMMARY OF AWARD

AWARD ON SALARY AND GENERAL ADJUSTMENT OF SALARY

A 1.0% general wage increase is awarded for 2014 effective January 1, 2014; a 2.0% general wage increase is awarded for 2015 effective January 1, 2015 and a 1.5% increase is awarded effective January 1, 2016 and an additional 1.5% general wage increase is awarded effective July 1, 2016.

Step increases: The language of Article 12.2 is retained for each year of the CBA, 2014 2015 and 2016. The County's position with respect to Implementation of the Springsted 7 Step Pay Schedule is awarded. The affected employees to be placed at Step 17 per the Springsted Study.

AWARD ON FLEX ACCOUNT CONTRIBUTIONS FOR 2014, 2015, 2016.

The language of article 17.1 is to provide for a contribution to the employee's flex account of \$890.00 per month in 2014; \$940.00 per month in the 2015 and \$990.00 per month in 2016.

AWARD ON COURT PREPARATION TIME – ISSUES 13, 14 & 15

The County's position is awarded. No new language regarding Court preparation time.

AWARD ON CLOTHING ALLOWANCE

The County's position is awarded.

AWARD ON LONGEVITY – ISSUE # 19

The County's position is awarded and the current language is maintained.

Dated: December 18, 2014

Beltrami County and 320 - 2014.doc

Jeffrey W. Jacobs, arbitrator